

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JUSTIN C. THOMAS,

Plaintiff,

vs.

FORD MOTOR COMPANY,

Defendant.

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CASE NO. 1:07CV3575

JUDGE CHRISTOPHER A. BOYKO

ORDER OF DISMISSAL

CHRISTOPHER A. BOYKO, J.:

This matter comes before the Court upon consideration of Plaintiff's Response (ECF DKT #8) to the Court's Order to Show Cause. For the following reasons, the captioned case is dismissed.

In its Show Cause Order (ECF DKT #7), this Court set forth the history of the proceedings in this case. Plaintiff, Justin C. Thomas, was injured in a motor vehicle accident that occurred in the Commonwealth of Pennsylvania on January 1, 2004. On that date, Plaintiff was a passenger in a 1997 Ford Expedition. Plaintiff's first Complaint was filed in state court on December 30, 2005, and removed to United States District Court on January 27, 2006. In

September of that year, Plaintiff moved for dismissal, outlining for the Court that the 1997 Ford Expedition could not be located, despite his best efforts. Plaintiff indicated that, without the vehicle, his ability to prosecute his claims, prove his allegations, and retain the necessary expert testimony were severely hampered. The Complaint was dismissed without prejudice on October 19, 2006.

After the one year allowed by the Savings Statute expired, the second Complaint was filed in state court on October 15, 2007. The Complaint was ultimately removed to federal court on November 16, 2007 and designated as Case No. 1:07CV3575. Three conferences were conducted; and at each of them, Plaintiff's counsel advised the Court the 1997 Ford Expedition was still not found. Acknowledging the diligent, yet unsuccessful, efforts on the part of Plaintiff's counsel to locate the vehicle, the Court was left with no option but to order Plaintiff to show cause why the case should not be dismissed.

Unfortunately, after more than four years, the 1997 Ford Expedition, in which Plaintiff was a passenger on January 1, 2004, cannot be located. Furthermore, it is unknown how many times the vehicle has been sold; how many individuals have owned it; nor how many repairs (and to what extent) have been performed. Not only will Plaintiff be unable to prosecute his negligence and strict liability claims; but Defendant will be incurably prejudiced in asserting its defenses, without the vehicle. Even in his most recent filing, requesting an extension of time to retain the services of a private investigator, Plaintiff offers no definitive time frame in which the vehicle can be found, or even if it is possible to find it.

The Court recognizes the thorough and diligent efforts of Plaintiff's counsel. However, in light of the inevitable prejudice to Defendant, which may not be remedied even if the vehicle

is recovered at this late date, this cause of action can no longer be maintained. Therefore, the above-captioned Complaint is dismissed.

IT IS SO ORDERED.

DATE: April 30, 2008

s/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge